

STATE OF MICHIGAN  
COURT OF APPEALS

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JACK DOUGLAS PASSWATERS,

Plaintiff-Appellee,

v

SANDRA KAY PASSWATERS, a/k/a SANDRA  
KAY CLAMPITT,

Defendant-Appellant.

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UNPUBLISHED  
September 4, 2003

No. 239422  
Kent Circuit Court  
LC No. 95-001786-DO

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a circuit court order denying her motion for an increase in spousal support. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

An award of alimony is generally modifiable. MCL 552.28. Modification is permitted for new facts or changed circumstances arising since the judgment was entered. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The party seeking to modify alimony has the burden of showing changed circumstances meriting modification. *Gates v Gates*, 256 Mich App 420, 434; 664 NW2d 231 (2003).

This Court reviews the trial court's findings of fact for clear error. A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. If this Court upholds the factual findings, it must decide whether the dispositional ruling was fair and equitable in light of those facts. This Court will not reverse the trial court's dispositional ruling absent a firm conviction that it was inequitable. *Moore, supra* at 654-655; *Magee v Magee*, 218 Mich App 158, 161-162; 553 NW2d 363 (1996).

The judgment of divorce originally required plaintiff to pay support in the amount of \$500 a week for two years, after which defendant could petition for additional support, though the trial court noted that "it's going to be a very heavy burden on her to convince me that she still needs money." Both parties appealed. While the appeal of right of the judgment of divorce was pending before this Court, defendant petitioned the trial court for continued spousal support pursuant to the provision in the judgment of divorce. This Court issued an order remanding this matter to the trial court for the limited purpose of conducting an evidentiary hearing on the petition.

An evidentiary hearing was held in March 1999. The trial court awarded defendant \$250 a week until plaintiff retired, defendant remarried, or either party died. The trial court cited several reasons for reducing the award. First, the trial court found that defendant was capable of at least part-time sedentary employment, but refused to freshen her job skills or to attempt to gain employment. Second, the trial court considered that the parties received an equal distribution of the marital assets. Finally, the trial court considered the permanency of the award. Both parties appealed, and this Court affirmed finding “[t]he trial court’s view of the evidence [] highly plausible.” *Passwaters v Passwaters*, unpublished opinion per curiam of the Court of Appeals, issued September 3, 1999 (Docket Nos. 204310, 204311) slip op p 4.

Defendant filed another motion for an increase in support in March 2001. The evidence showed that since the March 1999 hearing, defendant was no longer covered under plaintiff’s health insurance policy and was forced to secure coverage for herself. Whereas her out-of-pocket health care expenses were approximately \$3,200 a year under plaintiff’s policy, they had nearly doubled and defendant was paying approximately \$6,300 a year. On the other hand, since the March 2001 hearing defendant sold her condominium and moved in with her mother at a family farm, in which defendant has an interest that was not marital property subject to division. This evidence established that her living expenses had decreased approximately \$7,740 a year because she no longer pays mortgage payments, association fees, utilities and property taxes.

The trial court found that there had been “some changes” since the prior hearing, but that the changes in circumstances were not materially different from those anticipated in the March 1999 order. On appeal, defendant argues that the trial court improperly determined that the March 1999 order contemplated that that her health insurance policy would expire forcing her to secure coverage. Thus, defendant concludes, the trial court erred because it did not consider her loss in health care coverage a new fact or circumstance to justify a modification of support. Despite defendant’s suggestion that this Court should review the trial court’s finding based on the previous trial court’s order de novo, in “appellate review of a circuit court ruling in a divorce controversy of this sort, factual findings are upheld unless clearly erroneous.” *Stroud v Stroud*, 450 Mich 542; 551 n 6; 542 NW2d 582 (1995).

Notwithstanding defendant’s representations that the trial court improperly relied on the March 1999 proceeding regarding her expiration of health care insurance, the trial court indicated in its written opinion that her health care premiums were higher than anticipated at the time of the March 1999 order. For this reason, defendant’s assertion that the trial court failed to consider her loss of health care coverage a new fact or circumstance is not supported by the record. Moreover, the record reflects that defendant’s health care coverage has been a theme throughout each proceeding. In fact, this Court indicated that, “[a]t the time of trial, plaintiff indicated that he had been paying \$430 per week in spousal support for over two years and had been paying defendant’s health and automobile insurance.” *Passwaters*, *supra* at p 6 n 2. At the March 1999 hearing, defendant testified that once her COBRA rights expired, that her medical benefits would “skyrocket.” Also, that her health care premiums would be at least 2 ½ to 3 times the current amount. However, the trial court ordered a permanent award and noted that a change in circumstances may result should defendant’s mother die and defendant were to inherit a portion of the family farm. Given the prevalence that defendant’s health care insurance has factored into each proceeding, the trial court did not clearly err in finding that the previous trial

court considered that her health care coverage would expire when modifying her alimony award in March 1999.

Moreover, the trial court's finding that there was not a change in circumstances meriting modification was not clearly erroneous. The trial court found that, in light of all the evidence presented, there was not a *material* change in circumstances. As previously mentioned, there was evidence presented that defendant's out-of-pocket health care expenses had nearly doubled and defendant was paying approximately \$6,300 a year. However, there was also evidence presented that defendant's living expenses had decreased approximately \$7,740 a year because after selling her condominium, she no longer has mortgage payments, association fees, utilities and property taxes. Given this evidence, we conclude that the trial court did not clearly err in finding that defendant failed to establish a material change of financial circumstances.

We affirm.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens